

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building

Philadelphia, Pennsylvania 19107-4431

In the Matter of:

**Sun Company, Inc. (R&M)
1801 Market Street
Philadelphia, PA 19103,**

and

**Atlantic Refining & Marketing Corp.
1801 Market Street
Philadelphia, PA 19103,**

Respondents,

**Philadelphia Refinery
Point Breeze Processing Area
3144 Passyunk Avenue
Philadelphia, PA 19145,
ID ## PAD 002-289-700 and 51-19781,**

**Philadelphia Refinery
Darby Creek Tank Farm
Calgon Hook and Hook Roads
Darby, PA 19023,
ID # 23-11555,**

and

**Philadelphia Refinery
Old Hog Island Road
Hog Island Wharf
Tinicum, PA 19153,
ID # 23-11556,**

Facilities.

**U.S. EPA Docket Nos.
RCRA-III-274,
RCRA-III-9006-046,
RCRA-III-9006-047,
RCRA-III-9006-048,
TSCA-III-730**

**Consolidated Consent
Agreement**

PRELIMINARY STATEMENT

1. On September 30, 1997 the U.S. Environmental Protection Agency, Region III ("Complainant" or "EPA") issued five administrative complaints against respondent Sun Company, Inc. (R&M) ("Sun R&M"): Docket No. RCRA-III-274 was filed pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C § 6928(a) and (g); Docket Nos. III-RCRA-9006-046, III-RCRA-9006-047 and III-RCRA-9006-048 were filed pursuant to Section 9006(a) of RCRA, 42 U.S.C § 6991e(a); Docket No. TSCA-III-730 was filed pursuant to Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615. Two of these complaints -- Docket Nos. RCRA-III-274 and RCRA-III-9006-046 -- were also issued against respondent Atlantic Refining & Marketing Corp. ("Atlantic") for the identical violations alleged against Sun R&M. Sun R&M and Atlantic will collectively be referred to in this document as "Respondents." The five complaints referenced above will collectively be referred to as "the Complaints."
2. This Consent Agreement is entered into by EPA and Respondents to address the violations alleged in the Complaints.
3. For the purposes of this proceeding, Respondents admit the jurisdictional allegations of the Complaints.
4. Respondents neither admit nor deny the Findings of Fact contained in the Complaints and in this Consent Agreement.
5. Respondents neither admit nor deny the Conclusions of Law contained in this Consent Agreement.

6. For the purposes of this proceeding only, Respondents hereby expressly waive their right to a hearing on any issue of law or fact set forth in the Complaints.

7. The Civil Penalty and Supplemental Environmental Projects ("SEPs") agreed to by the parties in this Consent Agreement reflect the desire of the parties to resolve this matter without litigation.

8. Respondents consent to the issuance of this Consent Agreement and to the attached Consent Order and agree to comply with their terms, and also consent to the performance of the Supplemental Environmental Projects as set forth in the Settlement Conditions Document ("SCD") attached hereto. Respondents agree not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Consent Order, or the enforcement thereof.

9. Respondents hereby certify that, as of the date of this Consent Agreement, neither Respondent is required to perform or develop either of the SEPs by any federal, state or local law, regulation, or requirement, nor is either Respondent required to perform or develop either of the SEPs by agreement, grant or as injunctive relief in any other case. Each Respondent further certifies that such Respondent has not received, and is not presently negotiating to receive, credit in any other federal, state or local enforcement action for the performance of either of the SEPs.

10. This Consent Agreement and the attached Consent Order resolve only those civil claims which are alleged in the Complaints. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondents, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nor shall

anything in this Consent Agreement and the attached Consent Order be construed to limit the United States' authority to pursue criminal sanctions.

11. Complainant reserves any rights and remedies available to it to enforce the provisions of this Consent Agreement and Consent Order under RCRA, TSCA and regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, following the entry of this Consent Agreement and Consent Order.

12. No portion of any civil penalty, interest, or additional penalties paid by Respondents pursuant to this Consent Agreement and Consent Order shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes. In addition, the monies spent by Respondents to comply with the SEPs as set forth in the SCD shall not be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

13. Nothing in this Consent Agreement and Consent Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.

14. EPA shall have the right to reopen this Consent Agreement or to institute new and separate actions to recover civil penalties for the claims made in the Complaints in these matters if EPA obtains evidence that the information provided and/or representations made by Respondents to EPA regarding the matters at issue in the Complaints are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

15. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

EPA'S FINDINGS OF FACT AND EPA'S CONCLUSIONS OF LAW

16. EPA's Findings of Fact and Conclusions of Law set forth in the Complaints are hereby incorporated into this Consent Agreement as if set forth fully herein, except as provided in Attachment A.

CERTIFICATION OF COMPLIANCE

17. As to all relevant provisions of RCRA and TSCA allegedly violated as set forth in the Complaints, and all relevant regulations allegedly violated as set forth in the Complaints, at such locations and under such circumstances as set forth in the Complaints, Respondents certify to EPA that, upon investigation, to the best of their knowledge and belief, they are both presently in compliance with all such relevant provisions and regulations at such locations and under such circumstances as set forth in the Complaints.

CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECT

18. Respondents agree jointly and severally to pay a civil penalty in the amount of one hundred and twenty-five thousand dollars (\$125,000.00). Payment of such amount shall be made within sixty (60) days of the Effective Date of this Consent Agreement.

19. Respondents also agree to fully perform the SEPs as described in the attached SCD. In the event Respondents fail to perform the SEPs as required in the SCD, Respondents shall be liable for additional penalties as set forth in the SCD.

20. In consideration of the nature of the violations, Respondents' agreement to perform the SEPs and other relevant factors, EPA hereby agrees and acknowledges that payment of the Civil Penalty as set forth above and performance of the SEPs as set forth in the SCD (or such additional penalties as required for non-performance of the SEPs) together shall be in full and final satisfaction of all civil claims for penalties which Complainant may have under RCRA Sections 3008(a), 3008(g) and 9006(a) and Section 16 of TCSA for the violations alleged in the Complaints.

21. Payment of the amount required under the terms of paragraph 18, above, and payment of any amount required under Section V of the SCD shall be made by sending a cashier's or certified check, payable to the Treasurer, United States of America, to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III
P.O. Box 360515
Pittsburgh, PA 15251-6515

A photocopy of all such checks shall be sent simultaneously to:

- 1) Regional Hearing Clerk (3RC00)
- 2) Benjamin D. Fields
Senior Assistant Regional Counsel (3RC32)

Addresses for both above:

(Before July 22, 1998)

U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

(After July 22, 1998)

U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

OTHER APPLICABLE LAWS

22. Nothing in this Consent Agreement and Consent Order shall relieve either Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

PARTIES BOUND

23. This Consent Agreement and the attached Consent Order shall apply to and be binding upon EPA and each Respondent and its officers, directors, servants, employees, agents, successors and assigns.

EFFECTIVE DATE

24. The effective date of this Consent Agreement and Consent Order is the date on which it is signed by the Regional Judicial Officer.

The undersigned representatives of Respondents each certify that he or she is fully authorized by such Respondent to execute this Consent Agreement and to legally bind Respondent to this Consent Agreement.

For Respondent Sun Company, Inc. (R&M):

Date: 6/25/98

By: Michael M. Ruffner
Michael Ruffner
Plant Manager, Philadelphia Refinery

For Respondents Sun Company, Inc. (R&M) and Atlantic Refining & Marketing Corp.:

Date: 6/25/98

By: Edward Ciechon
Edward Ciechon
Senior Counsel

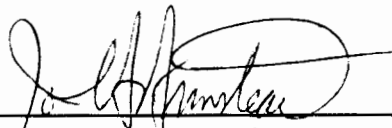
For Complainant United States Environmental Protection Agency, Region III:

Date: 6/30/98

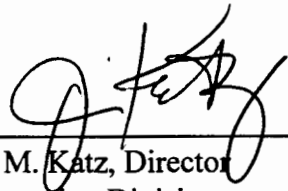
By: Benjamin D. Fields
Benjamin D. Fields
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Waste and Chemical Management Division, EPA Region III, the Air Protection Division and the Hazardous Site Cleanup Division, EPA Region III, recommend that the Regional Judicial Officer issue the Consent Order attached hereto.

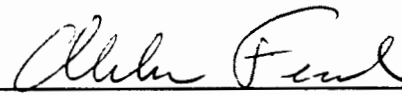
6/30/98
Date

By: 
John A. Armstead, Director
Waste and Chemical Management
Division
EPA Region III

6/30/98
Date

By: 
Judith M. Katz, Director
Air Protection Division
EPA Region III

6/30/98
Date

By: 
Abraham Ferdas, Director
Hazardous Site Cleanup Division
EPA Region III

ATTACHMENT A

ALLEGATIONS WITHDRAWN FROM COMPLAINT

The following allegation in the Complaints is hereby withdrawn:

RCRA-III-9006-046:

Paragraph 31(a)

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Philadelphia, Pennsylvania 19107**

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TSCA-III-730**

Consent Order

CONSENT ORDER

The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated as if set forth at length herein;

NOW THEREFORE, pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) and (g); Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a); Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615; and 40 C.F.R. § 22.18(c), the Respondents are hereby ordered to comply with the terms and conditions of the Consent Agreement, including, but not limited to, the Settlement Conditions Document ("SCD") and to pay a civil penalty of one hundred and twenty-five thousand dollars (\$125,000.00), as specified in the Consent Agreement. Payment of such amount shall be made within sixty (60) days of Respondents' receipt of a fully executed true and correct copy of this Consent Order and Consent Agreement by cashier's or certified check(s) made payable to the Treasurer, United States of America. Remittance shall be sent to the address set forth in paragraph 21 of the Consent Agreement, and a copy of the check or checks shall be sent simultaneously to the addresses for copies set forth in that paragraph.

Respondents' failure to comply with any conditions in the Consent Order and Consent Agreement may result in referral of this matter to the United States Attorney for enforcement in the appropriate United States District Court.

THE FOLLOWING NOTICE CONCERNS INTEREST AND LATE PAYMENT CHARGES AND COSTS:

Pursuant to 31 U.S.C. § 3717, an executive agency is entitled to assess interest and penalties on debts owed to the United States, and a charge to cover the cost of processing and

handling a delinquent claim. Interest will begin to accrue on any past due payment not paid on the relevant due date specified in the schedule set forth above. 40 C.F.R. § 13.11(a). Interest will be assessed at the rate of the United States Treasury tax and loan account rate. 40 C.F.R. § 13.11(a).

A late payment penalty charge of six percent per year will be assessed on any portion of the debt, including interest, which remains delinquent more than ninety (90) days after payment is due. Any such late payment penalty charge may be assessed as of the 91st day of such delinquency, but shall begin to accrue as of the first day the delinquent payment was due. 40 C.F.R. § 13.11(c).

Any administrative costs incurred as a result of delinquent debt shall be assessed against Respondents in accordance with 40 C.F.R. § 13.11(b).

The effective date of this document is the date on which it is signed by the Regional Judicial Officer.

Date: July 7, 1998

Benjamin Kalkstein
Benjamin Kalkstein
Regional Judicial Officer
U.S. EPA, Region III

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REGION III**

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**Settlement Conditions
Document**

SETTLEMENT CONDITIONS DOCUMENT

I. INTRODUCTION

1. This Settlement Conditions Document ("SCD") is part of the settlement of the five above-captioned administrative enforcement actions brought by the U.S. Environmental Protection Agency, Region III ("Complainant" or "EPA") against respondent Sun Company (R&M) ("Sun R&M") and respondent Atlantic Refining & Marketing Corp. ("Atlantic"). Sun R&M and Atlantic will collectively be referred to in this document as "Respondents." The purpose of this document is to set forth the tasks which Respondents have agreed to perform as part of the settlement of such actions. The tasks set forth in this SCD exceed the requirements of the Resource Conservation and Recovery Act, 42 U.S.C §§ 6901 *et seq.* ("RCRA"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.* ("TSCA"), and other applicable legal requirements.

2. The following documents collectively constitute a single integrated settlement as contemplated by the May 3, 1995, "EPA Interim Revised Supplemental Environmental Projects Policy": this SCD; the Consent Agreement signed by the parties and the Consent Order signed by the Regional Judicial Officer (collectively referred to as the "CACO"); and the Letter of Remittance Upon Satisfaction of Settlement Conditions to be issued by the Regional Judicial Officer to Respondents upon their full performance of the conditions of the SCD pursuant to Section VII.

3. In the Consent Agreement, Respondents have agreed to the assessment of a \$125,000 civil penalty and to undertake the supplemental environmental projects ("SEPs") described in Section III, below, which the parties agree are intended to secure significant environmental or public health protection and improvements.

4. The effective date of this document is the date on which the Consent Order associated with this document is signed by the Regional Judicial Officer. This document shall remain in effect until Respondents have paid the \$125,000 civil penalty and: (1) the conditions set forth in this SCD have been fully satisfied and the Regional Judicial Officer has issued a Letter of Remittance Upon Satisfaction of Settlement Conditions pursuant to Section VII, below, or (2) the conditions have not been fully satisfied and full payment of additional penalty amounts has been received by EPA as directed by issuance of a written demand pursuant to Section V, below.

II. SETTLEMENT CONDITIONS

1. Nothing in this SCD, including performance of these projects, shall be construed as prohibiting, altering or in any way limiting EPA's authority to enforce any applicable environmental requirements at Respondents' facilities or Respondents' duty to comply with such requirements, except as may be provided herein.

2. The total expenditure for the SEPs in Section III shall be not less than \$50,000, itemized as follows:

- | | | |
|----|--|-----------|
| a. | Planting of new street trees in the Girard Estates and Packer Park neighborhoods, as described in Section III.A, below | \$ 33,000 |
|----|--|-----------|

b.	Construction of a green area at the Passyunk Homes Housing Project, as described in Section III.B, below	\$ 17,000
	Total	\$ 50,000

3. Any public statement, oral or written, made by Respondents which refers to the SEPs described in Section III shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Resource Conservation and Recovery Act and the Toxic Substances Control Act.”

4. This SCD shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any measures undertaken under the terms of this Agreement.

III. DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS

A. STREET TREE PLANTING SEP

1. Respondents shall arrange for the planting of at least seventy-five (75) trees along city streets in the Girard Estates and Packer Park neighborhoods of Philadelphia, Pennsylvania. These neighborhoods are in close proximity to the facilities at issue in the Complaints.

2. All trees shall be planted by Townscapes, Inc., pursuant to Contract No. 980409, between Townscapes, Inc. and the Fairmount Park Commission (“the Commission”), attached as Exhibit I to this SCD. To the extent that any tree planting must be completed after the expiration of said contract, the trees will be planted pursuant to the then-current Commission “Trees and Tree Planting” contract (“successor contract”), by such contractor as selected by the Commission

to fulfill the successor contract. All planting will be overseen by the Commission. Fees for the planting will be as specified in said contract, or the successor contract, and will include a one-year contractor's guarantee as set forth in said contract or the successor contract.

3. Within ten (10) days from the effective date of this SCD, Respondents shall establish an internal account number for the tracking and payment of invoices relating to this SEP. Townscapes, Inc. (or such other contractor as is selected under the successor contract) shall bill Respondents directly for the work to be performed.

4. Respondents will spend no less than \$33,000 in payments to Townscapes, Inc. (or such other contractor as is selected under the successor contract) for trees and planting services. Trees will be planted, to the maximum extent possible, in the locations specified in Exhibit II to this SCD, subject to the reservations noted in paragraphs 5 and 6 of this Section III.A.

5. The total number of trees to be planted beyond the minimum of 75 trees is limited by the project budget of \$33,000. The exact cost for each tree will depend upon the specific conditions at each planting location, as specified in the contract identified in paragraph 2 of this Section III.A. The locations specified in Exhibit II will be prioritized and trees planted pursuant to the following schedule:

- a. On or before October 1, 1998, Respondent shall develop a list of exact locations for the planting of at least 75 trees. This list of locations, to be known as the as "Priority 1 List," shall be chosen from the locations set forth in Exhibit II. In the development of the Priority 1 List Respondents shall make reasonable efforts to work with the Commission, area residents, and community leaders associated with the Girard Estates Area Residents group and the Packer Park

Civic Association. The Priority 1 List shall be submitted to EPA on or before October 1, 1998, and shall include an exact budget for the planting of the trees at the locations on the List and copies of written permission from the owner of each property where trees are to be planted.

b. In the event that Respondents submit to EPA, on or before October 1, 1998, the full Priority 1 List, containing at least 75 locations along with an exact budget and written permission from each property owner, then Respondents shall complete the planting of trees at all locations listed on the Priority 1 List on or before May 1, 1999.

c. In the event that Respondents do not submit to EPA, on or before October 1, 1998 a full Priority 1 List, containing at least 75 locations along with an exact budget and written permission from each property owner, the remainder of the Street Tree Planting SEP shall be canceled, as follows: Respondents shall submit to EPA a list of all locations for which property owner permission has been granted, to be known as the "Abbreviated Priority 1 List," which shall include an exact budget for the planting of the trees at the locations on the List and copies of written permission from the owner of each property where trees are to be planted. Respondents shall also provide to EPA a written notice of intent to cancel the remainder of the Street Tree Planting SEP, setting forth the steps taken by Respondents in attempting to develop the full Priority 1 List and the reasons why Respondents were unable to develop a list of at least 75 locations. In addition, Respondents shall pay, on or before November 1, 1998, an additional penalty of

\$33,000 less the budget set forth in the Abbreviated Priority 1 List. Respondents shall complete the planting of trees at all locations listed on the Abbreviated Priority 1 List on or before May 1, 1999.

d. In the event that Respondents submit to EPA, on or before October 1, 1998, the full Priority 1 List, containing at least 75 locations along with an exact budget and written permission from each property owner, then Respondents shall develop, on or before March 1, 1999, a second list, to be known as the "Priority 2 List." The Priority 2 List shall be submitted to EPA on or before March 1, 1999, and shall include an exact budget for the planting of the trees at the locations on the List and copies of written permission from the owner of each property where trees are to be planted. The budget for the Priority 2 List, together with the budget for the Priority 1 List, shall total at least \$28,000.

e. In the event that Respondents submit to EPA, on or before March 1, 1999, the full Priority 2 List, (i.e. a Priority 2 List, complete with written permission from each property owner, with sufficient locations so that the combined budgets for the Priority 2 List and the Priority 1 List totals at least \$28,000), then Respondents shall complete the planting of trees at all locations listed on the Priority 2 List on or before November 1, 1999.

f. In the event that Respondents do not submit to EPA a full Priority 2 List (i.e. a Priority 2 List, complete with written permission from each property owner, with sufficient locations so that the combined budgets for the Priority 2 List and the Priority 1 List totals at least \$28,000), the remainder of the Street Tree

Planting SEP shall be canceled, as follows: Respondents shall submit to EPA a list of all additional locations for which permission has been granted, to be known as the "Abbreviated Priority 2 List," which shall include an exact budget for the planting of the trees at the locations on the List and copies of written permission from the owner of each property where trees are to be planted. Respondents shall also provide to EPA a written notice of intent to cancel the remainder of the Street Tree Planting SEP, setting forth the steps taken by Respondents in attempting to develop the full Priority 2 List and the reasons why Respondents were unable to develop the full List. In addition, Respondents shall pay, on or before April 1, 1999, an additional penalty of \$33,000 less the combined budgets set forth in the Priority 1 List and the Abbreviated Priority 2 List. Respondents shall complete the planting of trees at all locations listed on the Abbreviated Priority 2 List on or before November 1, 1999.

g. In the event that Respondents submit to EPA, on or before March 1, 1999, the full Priority 2 List (i.e. a Priority 2 List, complete with written permission from each property owner, with sufficient locations so that the combined budgets for the Priority 2 List and the Priority 1 List totals at least \$28,000), then Respondents shall develop, on or before June 1, 1999, a third list, to be known as the "Priority 3 List." The Priority 3 List shall be submitted to EPA on or before June 1, 1999, and shall include an exact budget for the planting of the trees at the locations on the List and copies of written permission from the owner of each property where trees are to be planted. The budget for the Priority 3 List, together

with the budgets for the Priority 2 List and the Priority 1 List, shall total at least \$33,000.

h. In the event that Respondents submit to EPA, on or before June 1, 1999, the full Priority 3 List (i.e. a Priority 3 List, complete with written permission from each property owner, with sufficient locations so that the combined budgets for the Priority 3 List, the Priority 2 List and the Priority 1 List totals at least \$33,000), then Respondents shall complete the planting of trees at all locations listed on the Priority 3 List on or before November 1, 1999.

i. In the event that Respondents do not submit to EPA, on or before June 1, 1999, a full Priority 3 List (i.e. a Priority 3 List, complete with written permission from each property owner, with sufficient locations so that the combined budgets for the Priority 3 List, the Priority 2 List and the Priority 1 List totals at least \$33,000), the remainder of the Street Tree Planting SEP shall be canceled, as follows: Respondents shall submit to EPA a list of all additional locations for which permission has been granted, to be known as the "Abbreviated Priority 3 List," which shall include an exact budget for the planting of the trees at the locations on the List and copies of written permission from the owner of each property where trees are to be planted. Respondents shall also provide to EPA a written notice of intent to cancel the remainder of the Street Tree Planting SEP, setting forth the steps taken by Respondents in attempting to develop the full Priority 3 List and the reasons why Respondents were unable to develop the full List. In addition, Respondents shall pay, on or before July 1, 1999, an additional

penalty of \$33,000 less the combined budgets set forth in the Priority 1 List, the Priority 2 List and the Abbreviated Priority 3 List. Respondents shall complete the planting of trees at all locations listed on the Abbreviated Priority 3 List on or before November 1, 1999.

j. Respondents' obligation to develop the Priority 2 List and the Priority 3 List will occur only insofar as the total project budget of \$33,000 has not been exhausted by the budget set forth on the Priority 1 List or the Priority 2 List, respectively.

6. Respondents shall make reasonable efforts to obtain the approval of the owners of properties listed in Exhibit II for the planting of any tree(s) on such owner's property, but shall not plant a tree at a location where the property owner objects to the planting.

7. Respondents shall schedule and conduct at least one meeting with property owners and local community groups to discuss the need for future maintenance to enhance the trees' chances for survival. Such meeting shall take place no later than two (2) months after the completion of all planting. Respondent shall arrange in advance to ensure that the time and location of the meeting will allow representatives of EPA and of the Fairmount Park Commission to be present. Specific invitations to the meeting shall be issued to the Packer Park Community Association, the Girard Estates Area Residents group, other local community groups which, prior to the meeting, express an interest in attending, and all property owners on whose land trees have been or will be planted.

B. PASSYUNK HOMES GREEN AREA SEP

1. Respondents shall arrange for the construction of a park and green area in the location shown on Exhibit III, located at 23rd and Hartranft Streets in the Passyunk Homes Housing Project, which is in close proximity to the facilities at issue in the Complaints.

2. Respondents shall spend no less than \$17,000 on the project for materials, soil preparation and planting services. The work shall be performed by a contractor selected by Respondents, using good faith efforts to obtain the greatest amount of suitable materials and services available within the project budget.

3. At a minimum the construction of the park and green area shall consist of

- a. preparation of the soil for trees, plants and shrubs;
- b. planting of at least ten (10) trees and thirty-two (32) shrubs, as shown in the locations in Exhibit III; and
- c. seeding with grass seed and construction of a stone path to ensure the healthy development of trees and shrubs, as shown in the locations in Exhibit III.

4. If possible within the project budget Respondent shall plant additional trees and shrubs, hedges and a flower bed, in the locations shown on Exhibit III. Benches and paved walkways may be constructed, but under no circumstances may Respondents include in the minimum project budget of \$17,000 the cost of benches, walkways, or any other similar construction which does not directly enhance or protect and preserve the natural environment. All trees, shrubs and other plants must be of a type best suited for an urban park in the climate found in Philadelphia.

5. Respondents shall obtain all necessary permits and licences for the performance of the work described in paragraph 3 of this Section III.B. Respondents shall make reasonable efforts to obtain permission of the Philadelphia Housing Authority ("PHA"), and any other parties who own or control the property where the Green Area will be constructed. In the event that Respondents cannot obtain such permission, under reasonable conditions, on or before November 1, 1998, the Passyunk Homes Green Area SEP shall be canceled, as follows: Respondents shall provide to EPA a written notice of intent to cancel the Passyunk Homes Green Area SEP, setting forth the steps taken by Respondents in attempting to obtain the necessary permission and the reasons why Respondents were unable to obtain that permission. In addition, Respondents shall pay, on or before December 1, 1998, an additional penalty of \$17,000.

6. Within ninety (90) days of obtaining permission from the PHA, pursuant to paragraph 5 of this Section III.B, Respondents shall inform EPA in writing as to the contractor selected for the Passyunk Homes Green Area SEP and shall submit to EPA for EPA approval a copy of the contract which clearly describes the work to be performed.

7. The work to be performed pursuant to this Section III.B shall be completed on or before June 30, 1999.

IV. REPORTS, DOCUMENTATION AND NOTIFICATION

A. STATUS REPORTS

1. Beginning with the first full calendar quarter after the effective date of this SCD, Respondents shall submit to EPA quarterly status reports regarding compliance with the SEPs described in Section III. Such reports must be received by EPA no later than: April 15 (for first

calendar quarter); July 15 (for second calendar quarter); October 15 (for third calendar quarter); and January 15 (for fourth calendar quarter). Such quarterly reports shall continue to be submitted for each SEP until Respondents submit the SEP Completion Report for such SEP, as described in Section IV.B, below.

2. Each status report shall contain the following information: 1) a description of the work that has been completed in the past calendar quarter and the actions that have been taken toward achieving compliance with this SCD; 2) a schedule and description of all activities scheduled for the next quarterly reporting period; 3) a description of any problems and/or delays encountered or anticipated; and 4) a description of any actions taken to prevent or mitigate such problems and (if applicable) a proposed modified completion schedule.

B. SEP COMPLETION REPORTS

1. Within 90 days after completion of each SEP (or within 90 days after cancellation of a SEP pursuant to paragraphs 5.c, 5.f, or 5.i of Section III.A or paragraph 5 of Section III.B), Respondents shall provide to EPA a SEP Completion Report. The SEP Completion Report shall contain the following:

- a. A detailed description of the SEP as implemented, including a description of the locations and species of all trees and other greenery planted as part of the SEP;
- b. A description of any operating problems encountered and the solutions thereto;
- c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;

d. Certification that the SEP has been fully implemented in accordance with the provisions of this SCD; and

e. A description of the environmental and public health benefits resulting from the implementation of the SEP.

2. Respondents shall maintain for inspection by EPA original records showing expenditures for the SEPs, such as purchase orders, receipts, and/or canceled checks.

Respondents shall also maintain non-financial records, such as work orders and work reports, documenting the actual performance of the SEP.

C. EPA REVIEW OF SEP COMPLETION REPORTS

1. Following receipt of each SEP Completion Report described in paragraph IV.B., EPA will do one of the following:

a. issue a written notification to Respondents accepting the SEP Completion Report; or

b. issue a written notification rejecting the SEP Completion Report, providing EPA's reasons therefore, identifying the deficiencies in the SEP Completion Report and granting Respondents a reasonable time from receipt of such notice within which to correct any deficiencies. In the event Respondents fail to correct the identified deficiencies EPA will issue a written notice of disapproval and may seek additional penalties in accordance with Section V herein.

2. If EPA rejects a SEP Completion Report pursuant to paragraph 1.b of this Section IV.C, EPA shall grant Respondents the opportunity to object in writing to such notification

within ten (10) days of receipt of such notification. EPA and Respondents shall have an additional thirty (30) days from the receipt by the EPA of the notification of objection to reach agreement on the matter in dispute. If agreement cannot be reached on any such matter within such thirty (30) day period, EPA shall provide a written statement of its decision and the rationale therefore to Respondents, which decision shall be final and binding upon Respondents. In the event EPA determines that a SEP has not been completed as specified herein, stipulated penalties shall be due and payable by Respondents to EPA in accordance with Section V herein. The submission of an unacceptable SEP Completion Report shall be the equivalent of the failure to submit a timely SEP Completion Report for purposes of the additional penalties set forth in paragraph 1.e of Section V, below, except that any additional penalties pursuant to such paragraph shall not run during the pendency of the procedure set forth in this paragraph, and shall instead run from the date on which Respondents received EPA's final written statement of its decision pursuant to this paragraph 2 of Section III.C.

D. NOTIFICATION AND REPORTING

1. Except as otherwise specified herein, whenever this SCD requires notice or submission of reports, information, or documents, such notice or submission shall be provided to the following persons:

a. For EPA:

Benjamin D. Fields
Senior Assistant Regional Counsel (3RC32)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

b. For Respondents:

Edward J. Ciechon, Jr.
Senior Counsel
Sun Company, Inc.
Ten Penn Center
1801 Market Street
Philadelphia, PA 19103-1699

Eric V. Schneider
Environmental Manager
Sun Company, Inc.
3144 Passyunk Avenue
Philadelphia, PA 19145-5299

2. Either party may substitute another party to receive notice on its behalf or change the address to which notices are to be sent by sending written notification of the substitution or change to the other party.

V. FAILURE TO COMPLETE SATISFACTORILY THE SEPS/FAILURE TO SPEND AGREED-ON AMOUNT/DELAY IN PERFORMANCE

1. In the event that Respondents fail to comply with any of the terms or provisions of this SCD relating to the performance of the SEPs described in Section III, above, or if the actual expenditures for the SEPs do not equal or exceed the cost of the SEPs described in Section II, above, Respondents shall be liable for additional penalties of up to, but not exceeding, \$50,000, as provided below:

a. If Respondents fail to submit complete Priority Lists by the deadlines set forth in paragraphs 5.a, 5.d, and 5.g of Section III.A, above, Respondents shall pay the additional penalties set forth in paragraphs 5.c, 5.f, and 5.i, respectively.

- b. If Respondents fail to complete the planting of trees by the deadlines set forth in paragraphs 5.b, 5.e, and 5.h of Section III.A, above, Respondents shall pay an additional penalty of \$250 for each day beyond the applicable deadline, up to the difference between the amount actually spent on tree-planting and the project budget of \$33,000.
- c. If Respondents fail to inform EPA in writing, within 90 days after obtaining permission from the PHA, pursuant to paragraph 5 of Section III.B, as to the contractor selected pursuant to paragraph 6 of Section III.B, above, or fail to submit to EPA a copy of the contract which clearly describes the work to be performed, Respondents shall pay an additional penalty of \$100 for each day beyond the deadline, up to the project budget of \$17,000.
- d. If Respondents fail to complete the work set forth in the contract referred to in paragraph 6 of Section III.B, as approved by EPA, by the deadline set forth in paragraph 7 of Section III.B, Respondents shall pay an additional penalty of \$250 for each day beyond the deadline, up to the difference between the amount actually spent and the project budget of \$17,000.
- e. If Respondents fail to submit a satisfactory SEP Completion Report as described in Section IV, above, within 90 days after the completion or cancellation of each SEP, Respondents shall pay an additional penalty in the amount of \$250 for each day the report is late beyond such deadline.

c. If Respondents fail to timely submit any quarterly report required under this SCD, Respondents shall pay an additional penalty in the amount of \$100 for each day such report is late beyond the required due date.

2. In exercising its discretion or making determinations under this SCD EPA shall be reasonable considering all of the circumstances. However, all determinations required to be made by EPA under this SCD, including the determination of whether each SEP has been completed satisfactorily, shall be in the sole discretion of EPA.

3. Notwithstanding any other provisions of this SCD, no action or decision by EPA pursuant to this SCD shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this SCD, the Consent Agreement, or the Consent Order.

4. Except as specified in paragraph 2 of Section IV.C, above, additional penalties as set forth in paragraph 1 of this Section V shall begin to accrue on the first day of non-compliance with the specified provision or deadline and shall continue to accrue through the final day of the completion of the activity, or until the limits stated in paragraph 1 of this Section V are reached. Where no limits have been set forth, additional penalties shall accrue until the sum of all additional penalties under this SCD totals \$50,000. In no event shall the total of all additional penalties, together with any expenditures approved by EPA under paragraph 1.a of Section IV.C, exceed \$50,000.

5. Respondents shall pay any additional penalties within thirty days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the attached Consent Order.

VI. FORCE MAJEURE

1. If any event occurs which causes or may cause delays in the completion of the SEPs as required under this SCD, Respondents shall notify EPA in writing within 15 days of said event or within 15 days of Respondents' knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondents to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondents to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondents' right to request an extension of its obligation under this SCD based on such incident.

2. If the parties agree that the delay or anticipated delay in compliance with this SCD has been or will be caused by circumstances entirely beyond the control of Respondents and cannot be overcome by due diligence, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate in writing to such extension of time.

3. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this SCD has been or will be caused by circumstances beyond the control of the Respondents and cannot be overcome by due diligence, EPA will notify Respondents in writing of its decision and any delays in the completion of the SEP shall not be excused.

4. The burden of proving that any delay is caused by circumstances beyond the control of Respondents shall rest with Respondents. Increased costs or expenses associated with

the implementation of actions called for by this SCD shall not, in any event, be a basis for changes in this SCD or extensions of time.

VII. SATISFACTION OF SETTLEMENT CONDITIONS

1. A determination of compliance with the conditions set forth herein will be based upon copies of records and reports submitted by Respondents to EPA under this SCD and any inspections of the work performed under the SEPs that EPA reasonably determines are necessary to evaluate compliance.

2. If EPA determines that Respondents have complied fully with the conditions set forth herein, EPA, through the Regional Judicial Officer, shall promptly issue a Letter of Remittance Upon Satisfaction of Settlement Conditions, which shall state that Respondents have performed fully the conditions set forth herein and paid all penalty amounts due pursuant to the terms of this SCD.

VIII. CERTIFICATION REQUIREMENT

Any notice, report, certification, data presentation or other document submitted by either Respondent under or pursuant to this SCD that discusses, describes, demonstrates or supports any finding, or makes any representation concerning either Respondent's compliance or non-compliance with any requirement(s) of this SCD, shall be certified by: (1) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for such Respondent. Any submission of false information by either Respondent shall be considered

submission of false information by such Respondent. The certification of the responsible official required by this paragraph shall be in the following form:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and, based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information contained in or accompanying this [specify type of submission] is true, accurate and complete to the best of my knowledge. I am aware that there are significant penalties for submitting false information including the possibility of fine and/or imprisonment.

Signature: _____
Name: _____
Title: _____

IX. INSPECTION


EPA or authorized representatives of EPA may, at reasonable times during business hours and after giving Respondents reasonable notice, enter Respondents' facilities to inspect documents related to compliance with the terms of the SCD. This right of entry is in addition to, and in no way limits, any other rights that may be available to EPA under any law or regulation.

X. CLAIM OF CONFIDENTIALITY

Pursuant to 40 C.F.R. § 2.203, Respondents may submit a claim of confidentiality for any document or information submitted under this SCD or under the Consent Agreement and Consent Order. Failure to make a confidentiality claim at the time the document is submitted shall constitute a waiver of such claim.

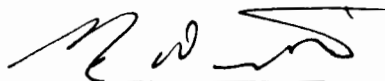
FOR RESPONDENTS SUN COMPANY, INC. (R&M) AND ATLANTIC REFINING & MARKETING CORP.:

6/25/98
Date


Edward Ciechon
Senior Counsel

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY

6/30/98
Date


BENJAMIN D. FIELDS
Senior Assistant Regional Counsel